



# General Purchasing Terms and Conditions of TBI Holdings B.V.

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# Article 1 General

## 1 In these General Purchasing Terms and Conditions the following definitions apply:

- General Terms: the General Purchasing Terms and Conditions of TBI Holdings B.V. filed at the Chamber of Commerce and applicable as of April 2022;
- Main Agreement: the agreement between the Client and the Principal;
- Intermediary: the natural person or legal entity from whom the Contractor hires the Worker for the execution of the Deliverable;
- Worker: an employee and/or agent hired by the Contractor for the execution of the Agreement;
- Payroll Taxes: PAYE tax, social security contributions, employee scheme contributions, and income-related contribution under the Dutch Healthcare Insurance Act combined;
- Client: the TBI corporation forming part of the group of companies of TBI Holdings B.V.;
- Contractor: the natural person or legal entity with whom the Client has entered into an agreement;
- Contract Sum: the amount for which the Contractor has undertaken to perform the Deliverable, exclusive of VAT;
- Agreement: the agreement entered into between the Client and the Contractor for the performance of the Deliverable;
- Deliverable: the deliverable to be performed by the Contractor under the Agreement;
- Principal: the natural person or legal entity with whom the Client has entered into the Main Agreement;
- Breach of Contract: any failure attributable to the Contractor to fulfil its obligations under the Agreement.

**These terms are at all times capitalized in these General Terms.**

# Article 2 Quotation and Agreement

## 1 The quotations of the Contractor shall be valid for at least 6 months.

- Even if the quotation of the Contractor contains a shorter period of validity.

## 2 The Contractor shall respond to an offer for an Agreement submitted by the Client within 8 days after the date thereof.

- If the Contractor agrees to the offer, the Contractor shall sign and return the Agreement as soon as possible.
- Does the Contractor disagree? Then the Contractor shall notify the Client in writing as soon as possible, with an explanation for the disagreement.

- If the Contractor fails to respond in writing within 8 days after the date of the offer, the Agreement shall be deemed accepted by the Contractor.

## 3 The condition precedent for every Agreement is conclusion of a Main Agreement.

## 4 The Client explicitly dismisses the general terms and conditions of the Contractor.

- Unless the Client confirms in writing to agree to the general terms and conditions of the Contractor.

## 5 After conclusion of the Agreement, the Contractor shall give the Client the following information:

- a. The Contractor shall submit an extract of the Contractor from the Register of Companies of the Chamber of Commerce which is not older than 3 months.
- b. If the Contractor is an independent contractor and if the Client is not required by law to withhold or pay any Payroll Taxes on the remuneration to the Contractor, the Contractor shall submit documents from the Dutch Tax Authorities clearly evidencing this, as soon as the Client so requests.
- c. If the Client is jointly and severally liable for the Payroll Taxes of the Contractor under the Dutch Collection of State Taxes Act 1990, the Contractor shall submit the following information:
  - the payroll tax number of the Contractor;
  - a copy of the third-party banking agreement (g-rekening) of the Contractor;
  - documentation with the following Worker data:
    - name
    - address and city of residence
    - date of birth
    - Dutch tax and social security number ("BSN")
    - nationality
    - type of ID, number, and expiry date of the document used by Contractor to establish the identity of the Worker
  - copies of the Certificates of Social Security Coverage for the foreign Worker(s) if the social security contribution levy has been assigned to their country of residence;
  - an original payment track record statement of the Contractor from the Dutch Tax Authorities.
- Such statement shall not be older than 1 month.
- The Contractor shall submit the said statement at least once per calendar quarter and also as soon as the Client so requests.
  - the payroll slips of the Contractor, as soon as the Client so requests;
- d. Does the Contractor engage Worker(s) from outside the EEA or from Switzerland for the execution of the Deliverable? Then the Contractor shall submit, before the Worker commences the work:
  - copies of a valid ID of any relevant Worker(s);
  - copies of the documents regarding such Worker(s) evidencing their residential status for the performance of labour, or a proof of notification to the Dutch Unemployment Benefit & Employment Office ("UWV Werkbedrijf") within the meaning of the Implementing Decree of the Foreign Nationals Employment Act.

**6 The Contractor shall provide the information on the Worker before the Worker starts working for the execution of the Deliverable.**

- And in case of any change of Worker data.
- This refers to the information requested in article 2.5 of the General Terms.

**7 The Contractor shall provide the requested information before starting with the execution of the Deliverable.**

- This refers to the information requested in article 2.5 of the General Terms.

**8 The Contractor shall see to it that the Client has the latest information at all times.**

- This refers in any event to the information requested in article 2.5 of the General Terms.
- In case of changes to such information, the Contractor shall immediately forward the new information to the Client.
- If the period of validity of statements or documents has expired, the Client shall immediately submit an alternative statement or document to the Client.

**9 The Contractor shall not submit any quotation or offer to the Principal.**

- For work or supplies concerning the Agreement.
  - Or with an expansion of or change to the Agreement.
- The Contractor shall not make any arrangements or agree to any regimes with the Principal regarding the Agreement or Deliverable without consulting the Client.
- If the Contractor receives directions or assignments from the Principal, the Contractor shall not implement these until the Client has given its explicit written consent.

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## Article 3 Safety

**1 Both the Client and the Contractor give priority to a healthy and safe working environment.**

- The Contractor shall actively support the Client in achieving its target(s) in the area of safety standardization (such as Safety Ladder, Safety Checklist for Building Contractors (“VCA”), et cetera).

**2 The Contractor shall comply with the Health & Safety plan (“H&S plan”) of the Client.**

- The H&S plan shall be drawn up for the work location
  - Giving due consideration to the applicable legislation.
- The Contractor shall follow the directions given on behalf of the Client or the Principal regarding compliance with the H&S plan.
  - The Contractor cannot demand any surcharge for this.

**3 The H&S plan of the Contractor shall be in line with the H&S plan of the Client.**

- The H&S plan of the Contractor may not be at odds with the H&S plan of the Client.

- Before commencement of its work, the Contractor shall submit its H&S plan to the Client for assessment.
- The Contractor shall actively keep the Worker(s) informed regarding the contents of the H&S plan which is applicable during the work.

**4 On the building site the Contractor and its Workers shall work in accordance with their own safety management system.**

- The safety management system must be certified under the Safety Checklist for Building Contractors (VCA).
  - Or a regime which, according to the Client, is equivalent to the VCA regime.
- Workers who have a managerial role at work on behalf of the Contractor must be in possession of a VCA Operational Managers’ Safety diploma (“VOL-VCA”).

**5 If the Contractor transfers employees on a temporary basis or posts them on secondment, the Contractor shall be in possession of a VCU certificate.**

- This is the Health & Safety Checklist Certificate for Temporary Employment Agencies.
- Workers who have a managerial role at work on behalf of the Contractor must be in possession of a VCU Intermediaries’ and Managers’ Safety diploma (“VIL-VCU”).

**6 The Contractor shall achieve the safety level of the Safety Ladder required by the Client.**

- The Client has signed the Construction Safety Governance Code (“GCVB”) in order to improve the construction safety.
- As of 1 January 2022, the Client has declared the Public Works Safety Guidelines (“ViA”) applicable to Contractors carrying out building site-related work.
- the website <https://gc-veiligheid.nl/tools/veiligheid-in-aanbesteding-via> specifies which safety level the Contractor must (possibly) achieve, and on what conditions. The Contractor shall also see to compliance with the ViA by its own contractors.

**7 The Contractor shall comply with the applicable safety instruction.**

- This refers inter alia to the Generic Safety Instruction of the Construction Safety Governance Code.
- Workers working on the building site or work location must successfully pass the safety instruction.
  - Before commencing their work.
  - Workers must be able to present proof, for instance by showing a certificate.
  - If a Worker is unable to present proof of this, he may be denied access to the building site or work location.

**8 The obligations under this article 3 are also applicable to contractors and suppliers of the Contractor.**

## Article 4 Integrity

### 1 The Contractor and its Workers shall comply with the TBI Code of Conduct.

- This refers to the latest version of the TBI Code of Conduct.
- It may be found in: <https://www.tbi.nl/over-ons/integriteit>.
- The Contractor shall also see to compliance with the TBI Code of Conduct by its own contractors and suppliers.
- The Client may carry out an audit into the Contractor and its contractors and suppliers in order to check whether they comply with the TBI Code of Conduct.
  - The Contractor shall cooperate with this and shall see to it that its contractors and suppliers also cooperate.

### 2 The Contractor shall not restrict free competition.

- The Contractor warrants that its quotations and offers are drawn up without any arrangements or concerted practice which could restrict, prevent, or distort free competition.

## Article 5 Socially responsible business practice

### 1 The Contractor shall submit a CO2 emission identification as soon as the Client so requests.

- The Contractor shall bear the costs of the CO2 emission identification.
- This refers to a CO2 emission identification regarding the year in which the work under the Assignment took place, as well as the year before that.
- Such CO2 emission identification must be drawn up in accordance with ISO 14064-1 and/or the Greenhouse Gas Protocol.
- The CO2 emission identification must bear a verification statement from a certification institute.
  - The said statement must meet the requirements in ISO14064-3 under “validation and verification statement”.

### 2 The Contractor and the Client shall comply with the Guiding Principles on Business and Human Rights (“Guiding Principles”) of the United Nations.

- The Contractor shall see to it that its own contractors and suppliers also comply with these Guiding Principles.
- The Client may carry out an audit into the Contractor and its contractors and suppliers in order to check whether they comply with the Guiding Principles.
  - The Contractor shall cooperate with this and shall see to it that its contractors and suppliers shall also cooperate.

### 3 Well in time before each shipment of dangerous substances, the Contractor shall provide the Client with a product information leaflet.

- The product information leaflet sets out regulations regarding personal protective equipment required for the consignment.
  - And other precautions in terms of the environment, health, safety, and hygiene.
  - And which measures need to be taken in case of accidents, fire, or other calamities.
- All regulations on the product information leaflet are in Dutch.
- Dangerous substances must be stored in accordance with the latest version of the Publication Series on Dangerous Substances (“PGS”) of the PGS Programme Council.

### 4 The Contractor warrants that the supplied and/or installed materials - in terms of their composition and features - meet all applicable requirements regarding the environment, health, safety, and hygiene.

- The Contractor can prove this by producing an accredited quality statement as soon as the Client so requests.
- The Contractor is liable for all damage suffered by the Client due to the fact that the Contractor supplies or uses materials which do not meet the said requirements.
  - The Contractor shall indemnify the Client and the Principal against all and any claims submitted by third parties as a result of failure to meet the said requirements.

## Article 6 Legislation, regulations, and permits

### 1 The Contractor shall comply with all legislation governing the Assignment.

- This also refers to legislation concerning safety, the environment, working conditions, salary rates, and payment.
- The Contractor shall take all measures required in order to comply with the legislation.
- The Contractor shall follow all directions received in order to comply with such legislation.
  - If the directions come from the Client or the competent authority.
- The Contractor shall indemnify the Client and the Principal against all and any claims submitted by third parties as a result of the fact that the Contractor has acted in breach of the legislation.
  - The Contractor shall do so beforehand and without any proviso.

### 2 The Contractor itself shall see to punctually obtaining all public-law and private-law permits, dispensations and other court orders needed for the execution of the Assignment.

### 3 The Contractor processes personal data in accordance with the applicable legislation concerning the protection of personal data.

- For instance the General Data Protection Regulation (“GDPR”).
- The Contractor shall enable the Client to fulfil its obligations under the GDPR.
  - If the Contractor and the Client are held to enter into a processing agreement, they shall make use of the templates of the Client.

## Article 7 Data

### 1 All data shared by the Client with the Contractor for the Deliverable shall remain the property of the Client.

- This refers to all drawings, designs, models, specifications, digital data and other data needed for the preparation or execution of the Deliverable.
- The Contractor may use -or allow the use of -such data for the Deliverable only.
- The Contractor may store or process such data within the European Union only.
  - Unless otherwise agreed in the Main Agreement.
- After execution of the Deliverable, the Contractor shall return all data to the Client, as soon as the Client so requests.
  - This also refers to all digital copies, transcripts and photocopies.
  - The Contractor shall do so immediately, without any delay.

### 2 The Contractor shall check all data received from the Client on accuracy and completeness.

- The Contractor shall carry out such check immediately after receiving the data.
- If the Contractor establishes any inaccuracy or incompleteness, it shall immediately notify the Client in writing.
  - If the Contractor does not carry out such check before submitting its offer, the accuracy and completeness of the data shall be deemed accepted by the Contractor, without proviso. The Contractor shall then bear all consequences of the use of inaccurate or incomplete information.

### 3 If the Contractor delivers goods and products, the Contractor shall see to it that all data needed in order to round off the work or project, are available to the Client.

- For instance for obtaining or retaining conformity statements and/or CE certificates for used or processed goods and products.
- The Contractor shall save such data for as long as this is required in accordance with the applicable European and national legislation.
  - The Contractor shall submit such data to the Client as soon as the Client so requests.

## Article 8 Contract Sum

### 1 The agreed Contract Sum is a fixed amount.

- Any changes to the costs of materials, salaries, taxes, or other costs shall not be offset.
- The risk of price increases shall be entirely born by the Contractor, which is why the applicability of Section 7:753 Dutch Civil Code and Paragraph 47 UAV 2012 has been precluded.
- The Contractor shall provide a statement of salaries and costs of materials as soon as the Client so requests.
  - Even if no financial risk arrangement is applicable.

## Article 9 Building materials and other materials

### 1 The Contractor shall supply solid materials to the Client, meaning materials which:

- are in conformity with the description and/or specifications stated in the Agreement;
- are in conformity with the reasonable and fair expectations of the Client.

### 2 The Contractor shall use certified sustainable timber only.

- This means: timber with an FSC®, PEFC or MTCS certificate.
- The Contractor shall enable the Client to meet its monitoring and reporting obligations in this regard.
  - For this, the Contractor shall provide the Client with all information required for every consignment.

### 3 The Contractor shall supply the materials DDP (incoterms) to the (working) location.

- The Contractor is responsible for the entire transport of the materials.
  - This includes payment of import duties.
- The Contractor shall unload the materials at the address and location specified by the Client.
  - If the Contractor chooses to use the unloading facility of the Client, the Contractor shall coordinate the unloading moment with the Client well in time.

### 4 The Contractor shall supply materials at all times within the agreed delivery time.

- The Client and the Contractor shall agree on a date and time.
- The agreed delivery deadline is a final date, and overstepping it shall immediately put the Contractor into default without requiring any further notice of default.
- Delivery and unloading outside normal office hours shall exclusively be possible with the consent of the Client.

- If the Client is unable to receive the materials, the Contractor shall see, at its own expense, to storage and monitoring of the materials until they can be delivered.

**5 Upon delivery at the (work) location the Client shall immediately become the owner of the materials.**

- Unless the materials are rejected by the Client.

**6 Each consignment shall be accompanied by a packing list and a waybill.**

- The packing list and waybill show the reference number of the Agreement.
- In addition, each consignment shall be accompanied by the applicable treatment, processing, connection, and operating instructions, as well as maintenance regulations.

**7 Upon delivery of materials to the Client, the Contractor shall submit a delivery sheet to be signed for receipt.**

- If the Contractor is unable to submit such delivery sheet to the Client if the Client so requests, the Client shall not be held to pay for the materials concerned.

## Article 10 Workers of the Contractor

**1 The Workers are under the management, supervision, and responsibility of the Contractor.**

- During the work, there shall at all times be a manager on site to factually manage the Workers.
  - The said manager shall be appointed and authorized by the Contractor to manage the Workers.
  - The said manager commands the Dutch language.

**2 The Contractor shall see to it that its Workers have all skills required.**

- For a professional, safe and efficient execution of the agreed work.
- This also means that the Workers are in possession of the required certificates,
  - This also refers to proof that they have followed the applicable safety instruction within the meaning of article 3.7.
- The Contractor shall do so at its own expense.

**3 The Client may send Workers away from the work location or deny them access.**

- If Workers prove unfit for their work.
- If Workers refuse to follow regulations or directions in the area of safety, working conditions, discipline, or the environment.
- If Workers show misconduct in the area of safety, working conditions, discipline or the environment.
- In such cases, the Contractor must immediately see to a proper replacement of the Worker(s) concerned.
  - The Client does not have to pay any resulting costs to the Contractor.

**4 The Contractor shall put Workers to work in accordance with the applicable rules on working hours and rest period on the building site.**

- The Contractor shall give due consideration to public holidays, days of leave and collective days off.
  - Prescribed by the authorities or a collective labour agreement by which the Client is bound.
- The Client is not liable for any resulting extra costs on the part of the Contractor.

**5 The Contractor shall see to it that the Client is notified as soon as possible of any accidents, near- accidents and other safety incidents on the building site.**

**6 Workers shall at all times carry their ID.**

- Worker must be able to produce their ID if someone so requests.
- Workers from outside the European Economic Area and Switzerland must be able to show their work permit.
- The Contractor shall enable the Client to fulfil its legal obligations to establish the identity and legality of the Workers.

**7 The Contractor shall comply with all relevant legislation concerning Workers.**

- Punctual payment of Payroll Taxes and VAT corresponding to the Agreement.
- Strict compliance with inter alia the following laws and regulations:
  - Dutch Balanced Labour Market Act (“WAB”);
  - Foreign Nationals Employment Act (“WAV”);
  - Dutch Anti-Fictitious Employment Construction Act (WAS);
  - Placement of Personnel by Intermediaries Act (“WAADI”);
  - Terms of Employment Act for Posted Workers in the European Union (“WagWEU”);
  - any provisions from the applicable collective labour agreements.
- Strict fulfilment of other obligations relating to the Workers.

**8 The Contractor shall transparently lay down the agreed terms of employment.**

- The agreed terms of employment mean: all arrangements regarding the salaries of Workers.
- The Contractor shall give the Client -or the competent authorities if they so request -access to such agreed terms of employment.

**9 The Contractor shall cooperate unconditionally with all investigations meant to verify that Workers have received their salary payable.**

- For instance checks, inspections, audits and salary validations.
- If so required by the competent authorities and/or the Client.
- The Contractor shall give unconditional access to the location where the information is kept.

**10 Does the Contractor involve other parties in the execution of the Agreement? Then the Contractor shall check whether there has been any underpayment by such other party.**

- By making enquiries at trade organisations and competent authorities.
- The Contractor shall record its enquiry results.
  - And shall give the competent authorities and the Client access to this if they so request.

**11 If the Client tries to recover a paid salary claim from the Contractor, the Contractor shall pay the said salary claim to the Client immediately after first demand.**

- If the salary claim was payable under Section 7:616.b Dutch Civil Code.
- If the Contractor does not pay immediately, the Client shall be entitled to withhold the amount from the next salary payment.
  - Or to recover the amount from the Contractor otherwise.

**12 The Contractor shall pay any financial penalties imposed for breaking the law concerning the engagement of Workers.**

- If the financial penalty is attributable to the Contractor.
  - This also refers to financial penalties imposed on the Client, its Principal or third parties by the Labour Inspectorate SZW.
  - The financial penalties imposed on the Client may immediately be offset by the Client against any debts of the Client vis-à-vis the Contractor.
- For instance for breach of the WAV, the WAADI, and/or the WagwEU.

**13 The Contractor may not employ any staff members of the Client or approach them for another position.**

- Nor may the Contractor put those staff members to work otherwise.

## Article 11 Equipment

**1 The Contractor shall see to it that all required equipment is available for the execution of the Deliverable.**

- Such as tools and personal protective equipment.

**2 The Contractor shall see to it that all of its equipment is in good working order and meets all applicable safety requirements.**

- The Contractor can prove this to the Client.
- Safety certifications and comparable documents for the equipment are available at the work location.

**3 The Contractor itself shall see to surveillance and insurance of its tools, equipment, or other property.**

- The Client is not liable for any damage to or loss of property of the Contractor or its suppliers and subcontractors.

**4 The Contractor itself shall pay the costs of loading and unloading.**

- This also refers to horizontal and vertical transport.
- This also means that all risks involved shall be borne by the Contractor.

**5 The equipment of the Client that the Contractor is permitted to use shall remain the property of the Client.**

- The Contractor may not take any equipment of the Client off the building site or use it - or allow it to be used - for other purposes than the Deliverable.
- After execution of the Deliverable the Contractor shall immediately return all equipment of the Client in good working order.

**6 The Contractor shall handle equipment of the Client with due care and shall see to a proper maintenance thereof.**

- As long as the equipment of the Client is used by the Contractor, the Contractor shall bear the risk of damage or loss.
  - The Contractor must take a risk insurance for this at its own expense.
- The Contractor shall check any equipment made available by the Client immediately upon receipt.
- If the Contractor establishes a defect, it shall immediately notify the Client.
- If the Contractor does not notify the Client upon receipt of any defects to the equipment, the equipment shall be deemed accepted by the Contractor in good working order.

## Article 12 Execution

**1 The Contractor shall keep the Client informed regarding the progress of the work.**

- The Contractor shall do so on a regular basis and in writing, in accordance with the directions of the Client.

**2 There is at all times a Worker present at the work location who is authorized to represent the Contractor for the Agreement.**

- Such Worker is authorized to represent the Contractor during the execution of the Deliverable.
- Such Worker shall report to the construction supervisor or assembly manager on behalf of the team at the start and at the end of the work.
- The Contractor shall also ensure that a Worker shall attend construction planning meetings on its behalf at all times.



**3 The Client shall make electric power and water available to the Contractor.**

- The Contractor may use this for the execution of the Deliverable.
- The Contractor may use this unless the available power or the capacity on the building site is insufficient.
- The Client shall never accept liability for disruptions of the power supply or for power outages at the work location.

**4 The Contractor may only place sheds on the building site with the consent of the Client.**

- For instance own canteen, storage room or toilets.
- The Contractor must obtain the prior written consent of the Client for this.

**5 The Client and the Contractor shall promote the recycling of materials, and shall strive to cut down the amount of waste and waste streams as much as possible.**

- The Contractor shall see to a tidy worksite during as well as after the work.
- The Contractor shall process all packaging material, rubble and waste material in accordance with all applicable rules.
  - The requirements under the H&S plan of the Client.
  - The applicable legal requirements, such as applicable environmental laws.
- The Contractor shall rent, at its own expense, sealable containers and bins for the disposal, processing or storage of waste material caused by deliveries or work.
- The costs of sorting, processing, disposal, or storage of waste material of the work are included in the Contract Sum.
- The Contractor shall provide the Client with copies of the report forms within the scope of the Dutch Environmental Management Act.
- The Client may suspend its payments until the Contractor has fulfilled all obligations under the applicable environmental legislation.
- The Contractor shall dispose of any hazardous waste in accordance with all applicable legislation and rules.
  - The Contractor shall do so at its own expense and risk.
- If the Contractor does not dispose of the waste at the Client's request, the Client may dispose -or see to disposal of - the waste at the expense and risk of the Contractor.

**6 The Contractor shall follow all directions of the Client for the execution of the Deliverable without any reservations.**

**7 Slashing, demolition, grinding, milling, sawing, welding, and/or drilling work is only permitted with the consent of the Client.**

**8 The Contractor may not start working until the Client has approved the required drawings and calculations.**

- If the drawings or calculations are included in the Deliverable.

**9 The Contractor shall not bring the work to a standstill without the written consent of the Client.**

## Article 13 Outsourcing

**1 The Contractor shall obtain consent before outsourcing the work to third parties in whole or in part.**

- After the written consent of the Client, the Deliverable may be executed in whole or in part by a third party.

**2 The Contractor shall remain responsible for any outsourced work or supplies.**

**3 The Client may pay any engaged third parties directly.**

- If the Contractor is unable to pay a third party to whom it has outsourced the Deliverable in whole or in part:
- The Client shall offset the payments concerned against any debts it may have vis-à-vis the Contractor.

**4 The Contractor declares these General Terms applicable to any agreements it enters into with third parties.**

- For the execution of the Deliverable in whole or in part.
- For hiring manpower.

## Article 14 Additional work or less work

**1 The Contractor may deviate from the Agreement only if it reports the deviations to the Client beforehand and if the Client has given its prior written consent for this.**

- This applies to all changes, including but not limited to additional work or less work, cost cuts, and improvements.
- The Contractor may not start any additional work until the Client has given an additional written assignment for this.
  - Unless the Client explicitly states beforehand that a start ought to be made with the execution of additional work in order to prevent any delays.

**2 If, according to the Contractor, additional work or less work is at stake, the Contractor shall immediately inform the Client in writing.**

- The Contractor shall specify the consequences thereof in terms of time and money.
- A change to the time schedule, work schedule or building schedule shall not entitle to payment of any additional work.

# Article 15

## Commencement, term of contract, and delivery

- 1 The execution period or delivery deadline stated in the Agreement shall be binding.**
  - The Client has the right to extend such delivery deadline.
  - The Contractor shall carry out the Deliverable in accordance with the time schedule it has agreed with the Client.
  - The Contractor shall ensure to have access to adequately skilled Workers and to proper equipment at all times.
- 2 The Client is not liable for any consequences of postponements or delays.**
  - For instance if it is not possible to start working at the agreed moment.
    - Or in case of intermediate changes to the time schedule, work schedule or construction timetable.
  - The Contractor may not terminate the Agreement due to postponements or delays.
- 3 The consequences of lost working time due to weather conditions shall remain for the expense of the Contractor.**
- 4 The Contractor shall immediately inform the Client if a delay is at stake or imminent.**
  - This applies to any form of (imminent) delay to the execution or delivery of the Deliverable.
  - If the Client so requests, the Contractor shall make its best effort to prevent any delays.
    - This also involves engaging extra Workers or letting Workers work overtime.
- 5 If the delay or postponement is attributable to the Contractor, this shall put the Contractor into default.**
  - The Client shall then have the right to set a new deadline by which the Contractor must round off the Deliverable after all.
  - The Client shall then also have the right to dissolve the Agreement under article 25 of these General Terms.
  - The Client shall then also have the right to recover all resulting damage from the Contractor.
    - Such damage shall also include any deductions granted or financial penalties imposed on the Client of the Principal under the Main Agreement.
    - Such right is applicable on top of a possibly agreed deduction regime within the meaning of, inter alia, paragraph 42 of the UAV 2012.
- 6 At the latest upon delivery of the Deliverable, the Contractor shall submit the maintenance instructions, operating instructions and as-built drawings.**
  - Upon delivery, all installations must be delivered ready for operation and fully tuned and functioning properly.
    - This also applies to any repaired and/or replacement installations.

# Article 16

## Inspection

- 1 The Contractor shall enable the Client to meet all quality-assurance requirements.**
  - This refers to legal as well as contractual requirements.
    - For instance requirements under the Main Agreement and requirements under the Dutch Building Quality Assurance Act (“Wkb”).
  - The Client or the Principal shall determine the inspection method for supplied materials, the Deliverable, and its components.
- 2 The Client and the Principal have the right to visit, test, or inspect the work.**
  - During the processing, manufacturing or storage.
  - The Contractor shall see to it that the Client has the facilities needed in order to be able to perform the site visit, test, or (technical) inspection.
    - Within reasonable boundaries.
  - The Contractor cannot derive any rights from the results of a site visit, test, or (technical) inspection.
  - If it turns out that materials meet the requirements under the Agreement, the Client shall pay the costs of the site visit, test, or (technical) inspection. If it turns out that the materials do not meet the requirements, such costs shall be borne by the Contractor.
  - If the Client rejects the materials or work in whole or in part, it shall immediately inform the Contractor.
  - In case of approval, the Contractor shall remain liable for the quality thereof, and the guarantee obligations shall remain in force.
- 3 The Contractor shall immediately replace or repair any rejected materials and/or work.**
  - Even if only a part of it is rejected.
  - As soon as the Client requests for replacement or repair.
  - The Client does not need to pay any surcharge for this.
  - The Contractor shall remain held to compensate any resulting damage.
    - To the Client or to third parties.
    - This also applies to loss due to delays.
  - Repair of damaged materials - instead of replacement - shall only be permitted with the written consent of the Client.
  - The Contractor shall dispose of all and any rejected materials at its own expense, as soon as the Client so requests.
  - If the Contractor does not repair or replace the rejected materials or works immediately, the Client may have these repaired or replaced at the expense of the Contractor.
    - In that case the Client may also dissolve the Agreement pursuant to article 25 of these General Terms.
- 4 If the Client rejects the materials or work in whole or in part, the Client shall be entitled to suspend payment.**
  - I.e. the payment of the part of the Contract Sum corresponding to the rejected materials or works.
    - Or of a part of the Contract Sum.
  - The Contractor shall remain held to compensate any damage on the part of the Client as a result of such rejection.

## Article 17 Guarantees

### 1 The Contractor warrants that the Agreement is carried out in accordance with the requirements set.

- The requirements set forth in the Agreement and the specifications of work.
- All other applicable requirements, standards and regulations.
- All materials are new and of solid quality.
  - Without design, manufacturing, assembly errors or material flaws.
- All materials used are in all respects in conformity with the corresponding samples provided to the Client.
- All materials used are suitable for the purpose for which they are used.
- All materials used meet all requirements under applicable legal, contractual or other regulations.
  - For instance the Building Materials Decree.
- The Contractor gives the aforementioned guarantee to the Client and to the Principal.

### 2 A warranty period of 12 months is applicable.

- The warranty period commences after delivery to the Principal of the project for which the Contractor has delivered materials or services or has carried out work.

### 3 During the warranty period, the Contractor shall repair or replace all defects at its own expense.

- If the Contractor fails to do so, the Client may have the defects repaired or replaced by a third party at the expense of the Contractor.
- After repair or replacement, the applicable warranty period shall commence once again for the full term.

### 4 The Contractor shall submit the guarantee statements to the Client.

- Upon delivery of the materials at the work location, if the Contractor does not instal these itself at the work location.
- If this refers to a contract for work, the Contractor shall submit draft versions of the guarantee statements to the Client for assessment and approval upon commencement of the work.
- If the Contractor does not submit the guarantee statements to the Client in time, the Client may suspend any payment to the Contractor until it has received the guarantee statements.

### 5 The maintenance periods of the Contractor shall not end until expiry of the maintenance period agreed between the Client and the Principal.

- The accounts of the Client shall serve as full evidence of the damage of the Client, except for any proof of the contrary by the Contractor.

### 2 The Client has the right to repair - or order the repair of - any defects resulting from a Breach of Contract, at the expense and risk of the Contractor.

- If the Contractor has not repaired the defect(es) concerned after notice of default by the Client before the deadline set for this by the Client.

### 3 The Contractor shall indemnify the Client against:

- a. any third-party claims for compensation of damage suffered in connection with a Breach of Contract or a wrongful act on the part of the Contractor;
- b. any claims by Workers;
- c. any financial penalties and/or disciplinary measures imposed on the Client and/or the Principal and/or third parties in connection with the non-compliance with legislation by the Contractor;
- d. any damage to property of third parties caused by the Contractor.

### 4 In case of bankruptcy the Client shall be entitled to compensation from the Contractor for the fact that, as a result of the bankruptcy, the Client cannot execute its contractual and/or statutory (guarantee) rights in connection with (latent) defects of the Deliverable.

- For such compensation, the Client has the right to charge 10% of the Contract Sum to the Contractor and to offset this against any claims of the Contractor.
- In addition, the Client shall be entitled to charge the actually suffered damage and to offset this against any claims of the Contractor.

## Article 19 Insurance

### 1 The Contractor must take out and maintain a company liability insurance ("AVB").

- The AVB must have an insurance cover of at least EUR 2,500,000 per event and EUR 5,000,000 per year including primary insurance cover for employee liability within the meaning of Sections 7:658 Dutch Civil Code and 7:611 Dutch Civil Code.

### 2 The Contractor is held to adequately insure any deployed equipment.

- The Contractor must be insured for damage to the equipment itself.
- And the Contractor must be insured for the liability for property damage and personal injury caused by or in connection with the use of the equipment, including all and any resulting consequential damage.
- The Client and the Principal are co-insured under the said insurance policy.

## Article 18 Liability

### 1 The Contractor is liable for all damage suffered by the Client as a result of a Breach of Contract.

**3 The Contractor is held to take out an adequate insurance for the equipment labelled as a motor vehicle, in accordance with the Dutch Motor Insurance Liability Act (WAM).**

- The said insurance must also provide insurance cover for the work risk.

**4 Upon first request of the Client, the Contractor shall give full access to the said insurance policy/policies.**

**5 If the Contractor is co-insured under a CAR insurance policy of the Client or the Principal, this shall be applicable only to categories (i) “The Work” (iii) “Existing Client Property”.**

- Category (iii) “Existing Client Property” only applies if and insofar as it has been factually insured.
- The own risk shall at all times be borne by the Contractor if it was the Contractor who caused the damage.
- Insurance payments under such CAR insurance policy shall not release the Contractor from its legal and/or contractual obligations or liabilities howsoever.

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## Article 20 Industrial and intellectual property

**1 The Contractor warrants that the materials used do not infringe any third-party industrial or intellectual property rights.**

- The Contractor shall indemnify the Client from all and any claims for such infringement. ,

**2 Goods and work protocols developed by the Contractor in collaboration with or on orders of the Client, shall become the property of the Client.**

- Such goods and work protocols may not be shared with third parties until the Client has given its written consent.
- The Contractor shall use any know-how gained for the execution of the Deliverable exclusively for the benefit of the Client.
  - The Contractor may not share such know-how with third parties or use it for its own benefit or for the benefit of third parties until the Client has given its written consent.

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## Article 21 Invoicing

**1 All invoicing shall proceed by means of XML invoicing.**

**2 The invoice must meet the requirements of the Dutch Turnover Tax Act 1968.**

- The signed, dated and numbered invoice of the Contractor shall in any event state the following information:

- a. The full name, and full address and city of residence of the Client and the Contractor;
- b. The bank account number of the Contractor;
- c. a description or reference of the project, specifying the work location;
- d. The project number;
- e. The order number, application number, or contract number;
- f. the VAT identification number used by the Contractor to perform its deliverables;
- g. a statement whether the VAT reverse charge mechanism is applicable and, if not, the applied VAT rate and amount;
- h. if the VAT reverse charge mechanism is applicable: the VAT identification number of the Client;
- i. the quantity and nature of the delivered goods, or the volume and nature of the services delivered;
- j. the date on which the goods or services were delivered or completed;
- k. if the Client is jointly and severally liable for the payroll taxes of the Contractor under the Dutch Collection of State Taxes Act 1990:
  - the payroll tax number of the Contractor;
  - the third-party bank account number of the Contractor;
  - the gross salary component taken into account in the invoiced amount.

**3 The Contractor shall enclose time sheets as well as a work order, purchase order or production order with every invoice.**

- If this refers to a contract for work or secondment agreement for Workers.
- The Contractor shall use a previously agreed template for the time sheets.
- The time sheets shall in any event state the name and the Dutch tax and social security number (BSN) of all Workers.
- The Contractor shall make one time sheet per week.
- The work order, purchase order or production order must be signed by the works manager and the construction supervisor at work on behalf of the Client.
- The Client shall not be held to pay the invoices if the time sheets or work order, purchase order or production orders are missing or have not been drafted in accordance with the requirements of article 21 of these General Terms.

**4 The invoice shall state the total amount of the performed work until the invoice date.**

- Each invoice is therefore drafted accumulatively.
- The amounts of previously submitted invoices shall be deducted from the said total amount.
- For additional work or less work the Contractor shall submit a separate invoice.

**5 The Client shall not owe payment for any invoices received by the Client later than 6 months after delivery of the work.**

## Article 22 Payment

### 1 The Client shall not pay until the Contractor has met all requirements under the Agreement and these General Terms.

- And after the Client has approved the delivered goods or performed work.
- And after the Contractor has returned the second copy of the Agreement after signing it.
- If all requirements have been met, the Client shall proceed to payment within 60 days after receipt of the invoice.

### 2 The Client shall not proceed to payment until the Contractor, if so requested, has submitted evidence for payment of payroll Taxes for its Workers.

- If the Client is jointly and severally liable for the Payroll Taxes of the Contractor under the Dutch Collection of State Taxes Act 1990.

### 3 The Client has the right to pay Payroll Taxes and VAT into the third-party bank account of the Contractor.

- Payroll Taxes and VAT for which the Client is jointly and severally liable under the Dutch Collection of State Taxes Act 1990.

### 4 The Client has the right to withhold Payroll Taxes and VAT from the Contract Sum and pay these directly to the Dutch Tax Authorities on behalf of the Contractor.

- As a result, the Client shall no longer owe these amounts to the Contractor.
- This refers to Payroll Taxes and VAT for which the Client is jointly and severally liable under the Dutch Collection of State Taxes Act 1990.

### 5 The Contractor may use money received from the Client in the third-party bank account only for payments to the Dutch Tax Authorities or for payment into the third-party bank account of a subcontractor to whom the Contractor has outsourced the work in whole or in part, or into the third-party bank account of an Intermediary.

### 6 The Client may suspend all payments to the Contractor as long as the Client still runs the risk of being held liable for payment of Payroll Taxes or VAT.

### 7 The Client shall not proceed to payment until the Contractor has submitted evidence of payment to its Workers what they are entitled to.

- If the Client is jointly and severally liable for compliance with legal obligations in terms of minimum wages and holiday allowance and any applicable collective labour agreements of the Contractor.

### 8 The Contractor waives, without any proviso, its retention right or any other statutory right to suspend performance.

### 9 The Client has the right to offset any of the Contractor's claims on the Client against any of its own claims on the Contractor.

- This also refers to future claims.
- This also refers to claims which are not yet due and payable.

### 10 The Contractor shall not be entitled to any instalments or advance payments unless this has been explicitly laid down in the Agreement.

- All payments shall then qualify as advances on the final invoice.

### 11 The Client has the right to suspend its payment obligations in case of bankruptcy of the Contractor.

- The suspension of payments shall continue until the Client has received a statement from the Dutch Tax Authorities evidencing that the Client shall not be held liable under the Dutch Collection of State Taxes Act 1990 for wrongful non-payment of Payroll Taxes and VAT by the Contractor and/or by any contractors or Intermediaries further down the supply chain.

### 12 The Contractor shall indemnify the Client against all and any claims for unpaid tax debts by the Dutch Tax Authorities and/or third parties.

- Tax debts are to be understood as Payroll Taxes, VAT and/or obligations under the applicable collective labour agreement.
- This refers to tax debts of the Contractor or any Intermediaries or subcontractors that is has engaged.
- The Contractor shall fully indemnify the Client if the Client is held liable to pay the said tax debts.
  - The Contractor shall then also compensate the costs to be incurred for this by the Client, plus the late-payment interest on such costs.

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## Article 23 Transfer and pledging not permitted

### No claims of the Contractor on the Client can be transferred or pledged.

- This cause shall have property-law effect.

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## Article 24 Security

### The Client has the right to demand extra security from the Contractor.

- This shall provide security that the Contractor shall comply with its obligations under the Agreement.
  - For instance a bank guarantee, a security deposit by a third party or a pledging of goods of the Contractor.

## Article 25 Dissolution

### 1 The Client has the right to dissolve the Agreement in case of a Breach of Contract by the Contractor.

- This shall not require any prior warning or notice of default.
- In this case the Agreement shall be dissolved through a written statement from the Client to the Contractor.

### 2 In case of dissolution of the Agreement, the Client shall be entitled to receive damages from the Contractor.

- The Contractor shall compensate all and any damage suffered and yet to be suffered by the Client as a result of the dissolution.
  - This also refers to the surcharge payable by the Client to outsource the remaining execution of the Deliverable to a third party.
- The Client may offset such damages against any outstanding payments of the Client to the Contractor.
- All payments of the Client to the Contractor shall be suspended until it has become clear what amount the Contractor owes the Client because of the dissolution.

### 3 In case of dissolution of the Agreement, the Client shall not owe any compensation to the Contractor.

### 4 In case of dissolution of the Agreement, the Contractor shall take back all materials that it supplied.

- If the Client can no longer use such materials.
- The Contractor shall take back the materials as soon as possible.
  - In any event within one month after dissolution of the Agreement.
- If the Client has already paid for the materials, the Contractor shall reimburse the Client for this.

### 5 The provisions in this article 25 are also applicable in the following situations:

- a. If the Contractor files a petition for its own administrative receivership or bankruptcy.
- b. If third parties file a petition for bankruptcy of the Contractor.
- c. If an administration order is issued to the Contractor.
- d. If the Contractor is declared bankrupt.
- e. If the Contractor discontinues or liquidates its business or transfers it to a third party.
- f. If the project forming the subject matter of the Agreement is brought to a halt before completion.
  - In this case only paragraphs 1 and 3 of this article shall be applicable.
- g. If the Main Agreement is dissolved.
  - In this case only paragraphs 1 and 3 of this article shall be applicable.

## Article 26 Advertising and publications

**The Contractor is not permitted to place advertising on and around the building site or to issue any publications except with the prior written consent of the Client.**

- This also applies to publications via social media.

## Article 27 Non-disclosure

**The Contractor shall not disclose any data, information and/or knowledge regarding the Assignment and the Client.**

## Article 28 Ranking

**In case of any incompatibility among the regulations, the following precedence order shall apply:**

- The Agreement shall have precedence over the General Terms.
- The General Terms shall have precedence over the UAV 2012.

## Article 29 Severance clause

**If a provision in these General Terms is null and void, all other provisions shall remain in force.**

- The Contractor and the Client shall make new arrangements by mutual agreement which shall as much as possible approximate the provision that was null and void.
- This also applies to provisions which are not binding otherwise.

# Article 30

## Applicable law and dispute resolution

### **1 This Agreement is governed by Dutch law.**

- If any provision in the Agreement or these General Terms is incompatible with imperative rules of law, such provision shall not be binding yet all other provisions shall remain in full force.

### **2 All and any disputes shall be submitted to arbitration by the Arbitration Board for the Dutch Building Industry ("RvA").**

- If the dispute emerged from the Agreement or from any secondary agreement.
- In that case the said regime shall also be applicable to disputes between the Contractor and the Client.
- The Client may also submit a dispute to the competent court of law.
  - In that case, the Client may also initiate interim injunction proceedings before the Interim Relief Judge of the District Court, District Court in order to obtain an interim relief measure or court permission to take precautionary measures.

### **3 If the Contractor is domiciled outside the Netherlands, only the Client may determine that the dispute be submitted to court in the country where the Contractor is domiciled.**

- If the Client does not opt for this, paragraph 2 shall remain in full force.

### **4 If the Client wins its case in the dispute, the Contractor shall compensate the Client for all costs of the dispute.**

- Judicial as well as extrajudicial expenses.
- This also refers to any costs of legal assistance.
- This also refers to the costs which were not subject to any payment order by the court or arbitration tribunal.

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